

March 13, 2007

Serial Letter: KFM-LET-000249

California Department of Transportation  
SFOBB – E2T1 Project  
333 Burma Road  
Oakland, CA 94607

Attention: Pedro Sanchez

Reference: SAS E2/T1 Foundation Project  
Caltrans Contract No 04-0120E4  
KFM Job No. 364/4347  
State Letter #05.003.01-002902, dated February 26, 2007

Subject: NOPC #04-012207 - Protest to State Response

Dear Pedro:

In accordance with Special Provision Section 5-1.15, “Disputes Review Board”, KFM would like to take this opportunity to reply to the State’s response to KFM’s NOPC #04-012207. It is our hope that the following discussion of the key elements involved in this dispute will clearly illustrate the basis of our objection.

**Element #1 – Contract Interpretation Discrepancies**

On August 3, 2004, Caltrans, KFM and its key subcontractors held the first partnering session. Of the many goals of this meeting, one was the flowcharting of the main contract specifications that would guide the work. People from all sides gathered together to flowchart the Special Provision 5-1.105, “Integrated Shop Drawings”. It was then, that attention was drawn very quickly to the fact that KFM/Norcal’s interpretation of this contract specification was quite different from the State’s.

As a result, several conversations ensued thereafter. Most significantly, the State and KFM developed a set of “Guidelines for the ISD Process” and memorialized them in a handout dated August 17, 2004. In it, definition of extra work and potential extra work was documented. In short, all solutions beyond the specified “A-F” solutions were to be considered either as “extra work” if the solution required redrafting or “potentially no extra work” if the solution did not require redrafting.

All of the subject RFIs in NOPC #4 required redrafting and additional conflict checks prior to final submittal to the State in the Spring of 2007. As defined in the “Guidelines for the ISD Process”, all solutions requiring redrafting were to be considered “extra work” and subject to compensation under Standard Specification Section 4-1.03D, “Extra Work”.

It is with this guiding principle in mind that Norcal and KFM requested additional compensation for this effort.

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## **Element #2 – Contract Change Order #29 – Compensation Allotment**

On July 29, 2005, the Department of Transportation issued a letter to KFM withdrawing the temporary termination issued on January 5, 2005. KFM obliged itself to submit a restart schedule by August 29, one month later. This, along with subcontractors' termination/restart proposals, would form the basis of determining the total compensation KFM would be entitled to under the pending CCO#29.

On September 20, 2005, KFM received Norcal Letter #4 which provided Norcal's "Contract Restart: Cost to Completion" proposal. There were essentially two components to the proposal: costs as a result of the termination/restart itself and an estimate of the costs to incorporate all subject RFIs into the final ISD package. The first component was valued at approximately \$50,000 and the second component at approximately \$200,000.

However, the State limited the scope of CCO#29 to cover only those costs associated with restarting and completing the work as described in the base contract, previous CCOs and CCO#29 itself. Final CCO#29 language went on to state that "It is the intent of the parties that the compensation provided in this CCO, together with all other CCOs issued prior to the date of acceptance of this CCO and the base contract, will resolve all issues related to restarting the contract and establish a new contract price for the completion of the contract, except as listed in Section 4.0 of this CCO" [emphasis added].

Norcal's September 20<sup>th</sup> proposal had two components; only the first component qualified under the terms of CCO#29. And, as such, the State allotted the \$50,000 for that work as part of the the final CCO#29 compensation package. The second component was not an issue related to restart and fell outside of the original contract scope. Therefore, the second component of Norcal's proposal, at an estimated cost of approximately \$200,000 for the incorporation of the RFI resolutions was not considered in the final CCO#29 compensation package.

There were other similar contractual issues that were set aside during the CCO#29 negotiations as well because they were not restart issues or part of the original contract scope. Two examples include the Isolation Material Specification Change that was later handled in CCO#30 and the UT-PJP Change that was handled in CCO#31. The extra work associated with incorporating the RFI resolutions into the final ISD submittal was of similar nature.

Only \$50,000 of the total \$81M allowed under CCO#29 was allocated to KFM on Norcal's behalf. This can be verified by the official accounting records for CCO#29. As a result, KFM issued a Service Agreement Change Order #2 to Norcal's contract for \$46,000 to cover all termination claim issues and to extend their professional liability insurance. Language was also included to address how KFM would assist Norcal in the pursuit and financing of any future potential claims on remaining work. This change order was executed on February 23, 2006.

## **Element #3 – Timeliness**

Twenty-four RFIs, confirming conflict resolutions discussed in the Working Drawing Campus, were submitted to the State for their response between November 18, 2004 and January 4, 2005; all before the temporary contract termination was issued on January 5, 2005.

Twelve of the responses were received prior to the temporary contract termination as well, between the dates December 10, 2004 and December 24, 2004. No significant action was taken on these since the contract was terminated shortly thereafter. The other twelve were responded to by the State after the temporary termination was withdrawn on July 29, 2005. These responses came between the dates of August 2, 2005 and November 11, 2005.

Norcal Structural incorporated the responses to the RFIs into the final ISD package between January 2006 and June 2006. Timecards were monitored throughout this period to verify time spent on this effort. The final ISD package was divided into two submittals, one for each of the pier locations. The E2 package was submitted on May 3, 2006 and approved on May 30, 2006 and the T1 package was submitted on June 12, 2006 and approved on June 27, 2006.

State letter #1489, dated June 30, 2006 directed the incorporation of the approved ISD revisions and all related RFI responses into the work. It was stated that payment for extra work associated with applying the resolutions and RFI responses would be addressed under CCO#41, all in accordance with Specification Section 4-1.03, "Changes".

Later on September 13, 2006, State letter #1869, issued revised contract plans that would illustrate the resolutions and RFI responses. Again, it was stated that payment for extra work and changes in contract item quantities associated with applying these revised contract plans to the construction would be addressed in pending CCO#41.

It was on this basis that KFM forwarded Norcal's final request for compensation for their extra work performed to incorporate the changes illustrated in CCO#41 into the final ISD package. Norcal's final request for compensation, provided in their letter #11, dated November 27, 2006, was forwarded to the State on December 6, 2006 under KFM letter #223.

The State responded on January 17, 2007, via State letter #2563, denying Norcal's request for compensation, thus prompting the filing of the Initial Notice of Potential Claim five days later on January 22, 2007, the Supplemental Notice of Potential Claim on February 6, 2007 and the State's rejection of the NOPC #4 on February 26, 2007.

### **Summary**

It is with these elements in mind along with the contract specifications and our change order with Norcal that KFM pursues this claim on Norcal's behalf. It is KFM's desire that the State revisit their position on this issue with the above elements in mind and allow compensation for Norcal's effort in pursuing the ISD work through to completion so as to provide a complete and accurate representation of the ISD work and so as to not delay the project's completion.

Sincerely,  
**KIEWIT/FCI/MANSON, a JV**

Lee Zink  
Project Director

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March 13, 2007

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cc: file, Norcal Structural

attachment: Norcal Structural Letter #ND-KFM-LTR-15, dated March 13, 2007